IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO.32 OF 2007
IN
WRIT PETITION NO.5257 OF 2006

Maharashtra State Road
Transport Corporation .. Patitioners

Vs.

Rambhau Laxman Ubale .. Respondent

Mr.G.S.Hegde i/b M/s.G.S.Hegde and Associates for the petitioners

Mr.Madhav Jamdar for the respondent

CORAM : J.N.PATEL &
A.A.SAYED, JJ.

DATED : 16TH APRIL, 2007

P.C.:

1. Heard.

2. The employer has preferred this L.P.A. aggrieved by the decision of the First Labour Court, the Industrial Tribunal and the learned single Judge of this court holding that the dismissal of the respondent who was the original

complainant before the Labour Court was not proper.

3. It is the case of the appellant / employer that as he was on leave since the month of May 1989 for a substantial period, therefore, the subsistence allowance was calculated and paid subsequently i.e. in July 1989 which has been strongly refuted by the learned counsel for the respondent by saying that the respondent workman had applied for subsistence allowance in the month of August 1989 itself and inspite of the application being made, it was not paid in time. Therefore, the learned Presiding Officer of the First Labour Court held that the enquiry stands vitiated and afforded an opportunity to the respondent employer to lead evidence by giving liberty to substantiate the charges alleged against the complainant. The employer rather than availing of the opportunity contested the matter by preferring a revision application before the Industrial Court which came to be rejected. The said decision was challenged before the learned single Judge and the learned single Judge after hearing the learned counsel for the parties

concurred with the findings of the tribunal below and observed that in fact the subsistence allowance was not paid on the date on which it ought to have been paid. The findings of the courts below is well established and borne out from the record and dismissed the petition.

4. The learned counsel appearing for the appellant employer submitted that the delay in paying the subsistence allowance cannot be attributed to the employer for the reason that the respondent workman did not attend the office and was on leave and therefore, the subsistence allowance could not be paid to him and therefore, the impugned orders right from the labour court deserve to be quashed and set aside.

5. It can be seen from the judgment and order of the Labour Court that inspite of giving an opportunity to the appellant employer to substantiate the charges against the respondent, the respondent did not avail of the opportunity and sought repeated adjournments on one pretext or the other and ultimately failed to establish their

case.

6. In view of the concurrent finding of fact, we do not find that the learned single Judge has committed any error or illegality in dismissing the writ petition. Therefore, the Letters Patent Appeal is dismissed with costs.

(SHRI J.N. PATEL, J)

(SHRI A.A. SAYED, J)